

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

4 H CONSTRUCTION CORPORATION

**COUNTER-DEFENDANT/
PLAINTIFF**

V.

CIVIL ACTION NO.: 4:08CV113-DAS

**SUPERIOR BOAT WORKS, INC.,
COLLINS BRENT D/B/A
SUPERIOR BOAT WORKS, INC. AND
BARGES PB-0612 AND PB-0604**

**COUNTER PLAINTIFFS/
DEFENDANTS**

ORDER

This matter is before the court on motion of the defendants to alter or amend the findings of fact and conclusions of law and judgment or for a new trial (# 65). It is well established that there are only three possible grounds to support a motion filed pursuant to Rule 59(e): (1) an intervening change in controlling law; (2) the availability of new evidence not previously available; or (3) the need to correct a clear error of law or prevent manifest injustice. *See In re Benjamin Moore & Co.*, 318 F.3d 626, 629 (5th cir. 2002). In the present case, the defendants do not contend there has been either an intervening change in controlling law¹ or the availability of new evidence not previously available. The defendants do contend there is a need to correct a clear error of law. With their motion, the defendants point to virtually every legal decision made in the court's initial findings and argue they were made in error.

After considering the motion and the response thereto, however, the court finds its initial decision and the reasoning cited in support correct. Accordingly, the defendants' motion is not

¹While the defendants do make the argument that a new Mississippi statute (section 79-4-14.22) related to reinstatement of a dissolved corporation may apply, this argument was made in their proposed findings of fact and conclusions of law. In other words, the defendants do not contend the change was made between the time of this court's initial findings and the present motion, and thus, the change is not the "intervening change" contemplated by Rule 59.

well taken.

IT IS, THEREFORE, ORDERED that the defendants' motion to alter or amend the findings of fact and conclusions of law and judgment or for a new trial (# 65) is hereby DENIED.

SO ORDERED, this the 26th day of October 2009.

/s/ David A. Sanders
UNITED STATES MAGISTRATE JUDGE